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March 17, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 16, 2005

Case Number: TSO-0281

This Decision concerns the eligibility of XXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." [1] A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

I. Background

The DOE granted the individual a security clearance in 1998 so that she could perform her job responsibilities for a DOE contractor. On June 3, 2004, the individual reported to the LSO that she had taken an overdose of prescription medications a few days earlier and had voluntarily admitted herself to the mental health unit of a local hospital. Exhibit 15. This revelation prompted the LSO to conduct a Personnel Security Interview (PSI) with the individual to discuss the circumstances that lead to the individual's hospitalization. After the PSI, the LSO referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for a mental evaluation. The DOE consultant-psychiatrist examined the individual in February 2005, and memorialized his findings in a report (Psychiatric Report or Exhibit 6). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual suffers from Bipolar II, a mental illness which, in the opinion of the DOE consultant-psychiatrist, may cause a significant defect in the individual's judgment and reliability.

In June 2005, the DOE initiated formal administrative review proceedings by informing the individual that the agency possessed derogatory information that created substantial

[1] Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

doubt regarding her continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the DOE described this derogatory information and explained how that information fell within the purview of two potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections f and h (Criteria F and H respectively).[2]

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations and requested an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. After receiving an extension of time from the OHA Director to accommodate the parties' schedules, I conducted the administrative hearing in this case. The first day of the hearing lasted 10 hours. I recessed the hearing after the first day to permit the individual 30 days to submit some medical information that was potentially crucial to the disposition of the case. After the individual submitted the medical documentation to the DOE Counsel and me, I conducted the second day of the hearing telephonically.

At the two-day hearing, eight witnesses testified, some of them twice. The DOE presented the testimony of one witnesses and the individual presented her own testimony and that of six other witnesses. In addition to the testimonial evidence, the DOE submitted 20 exhibits into the record; the individual tendered 14 exhibits.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The

[2] Criterion F pertains to information that a person has "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31." 10 C.F.R. § 710.8(f). Criterion H concerns information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment and reliability." 10 C.F.R. § 710.8(h).

individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to an individual's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the DOE cites two potentially disqualifying criteria as bases for suspending the individual's clearance, *i.e.*, Criteria F and H.

The Criterion F allegations in this case arise from conflicting information that the individual allegedly provided to the LSO and the DOE consultant-psychiatrist about her past illegal drug use that cast doubt on the individual's veracity. From a security standpoint, false statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See e.g.*,*Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995), 25 DOE ¶ 82,752 (1995) (affirmed by OSA, 1995); *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000). In addition, a person's deliberate falsification raises a security concern that he or she might be susceptible to coercion, pressure, exploitation, or duress arising from the fear that others might learn of the information being concealed. *See Personnel Security Hearing* (Case No. VSO-0289), 27 DOE ¶ 82,823 (1999), *aff'd*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000).

With regard to the Criterion H allegations at issue, they are based solely on the opinion of the DOE consultant-psychiatrist that the individual suffers from "Bipolar II Disorder, Most Recent Episode Depressed," a mental illness which, according to the DOE consultant-psychiatrist causes, or may cause, a significant defect in the individual's judgment or reliability. From a security perspective, a mental illness or condition may cause a significant defect in a person's psychological, social and occupational functioning and could raise questions about the person's judgment, reliability and stability. *See* generally, Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline I, ¶ 27.

IV. Findings of Fact [3]

A. Overview of the Individual's Medical History

The individual has suffered from serious psychological, physical and dental problems at various times over the last ten years. Ex. 12, Ex. D, Tr. at 199-200. To understand the events leading up to the individual's hospitalization in 2004 for a drug overdose, it is useful to recount the individual's extensive medical history and the care that she has received from various medical and mental health providers.

According to the record, a physician first prescribed Prozac for the individual in 1995 to treat her depression and anxiety. Ex. 12 at 1. The individual continued taking Prozac until the fall of 2001 when, according to the record, her depressive symptoms became more intense. *Id.* Thereafter, the individual was prescribed a variety of psychotropic medications to treat her depression and possible other mental health issues by her primary care physician and three psychiatrists.

With regard to medical problems, the individual has undergone at least five surgeries to address gynecological problems between 1997 and 2001. Ex. 12, Ex. K at 2. She also has suffered from migraines and asthma and currently takes prescription medications to address both these medical conditions. Ex. 12. The asthma is sufficiently serious that the individual has been hospitalized for this condition. Ex. K at 3. Finally, the individual has undergone multiple biopsies since 2003 in an effort to determine the nature of a systemic infection from which she continues to suffer. Ex. K at 2. In December 2005, the individual was diagnosed with Common Variable Immunodeficiency Disease, an immune system disorder. *Id.* at 200.

As for her dental difficulties, within the last two years the individual has undergone 11 surgeries for unremitting jaw pain and antibiotic-resistant infections. Tr. at 199.

According to the record, the individual is currently taking a medication regime which consists of Fluoxetine, Risperdal, Cenestin, Ambien, Levaquin, Topamax and Oxycodone. Ex. K at 3 and Ex. N. In addition, the individual has a prescription for the steroid, prednisone, which she is to take on an "as needed" basis for her asthma. Tr.at 464. During the period October 1, 2003 to October 28, 2005, the individual filled 187 prescriptions. *See* Exhibits G and H.

B. Mental Health Care

In addition to receiving medical care consistently from her primary care physician, the individual has been evaluated or treated by one social worker, three psychiatrists, and one Ph.D. psychologist in the last five years.

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[3] The hearing transcript in this case will be cited in this Decision as "Tr." and the Exhibits will be cited as "Ex." together with their corresponding numeric or alphabetic designation.

In September 2001, the month following the dissolution of the individual's four-year marriage, the individual consulted a social worker. Ex. 13. In February 2002, the social worker referred the individual to Psychiatrist #1. Ex. 11. The social worker provided counseling to the individual for three years, *i.e.*, from September 2001 until October 2004. Ex. 13. The counseling focused on the individual's "relationship issues" and on her depression. *Id.* The social worker originally diagnosed the individual as suffering from Adjustment Disorder with Mixed Anxiety and Depressed Mood. Id. In 2004, the social worker changed the individual's diagnosis to Depressive Disorder, Not Otherwise Specified (NOS).

Psychiatrist #1 diagnosed the individual as suffering from Bipolar II in February 2002. Ex. 11. He treated the individual from February 2002 to December 2002, and from June 2003 until at least the fall of 2004. *Id.*

In January 2003, the individual sought a second opinion from Psychiatrist #2. Ex. 12. Psychiatrist #2 originally diagnosed the individual as suffering from Bipolar II, a diagnosis which he changed on June 20, 2003 to "Depressive Disorder, Recurrent" after the individual told him that the initial information she had provided to him was inaccurate. *Id*. at 13. *Id.* According to Psychiatrist #2's notes, the interaction of two drugs, Paxil and Tegretol, not a bipolar disorder, caused the individual to experience symptoms which mimicked a manic episode. *Id.* Psychiatrist #2 provided pharmacologic management for the individual from January 2003 until October 2003 while the social worker continued to provide therapy to the individual. *Id.*

In June 2005, the individual consulted with Psychiatrist #3. Tr. at 117. Psychiatrist #3 has treated the individual continuously since June 2005 for depression. *Id.* at 119. In Psychiatrist #3's opinion, the individual does not suffer from Bipolar II. *Id.* at 120.

On October 20, 2005, a Ph.D. psychologist evaluated the individual and administered a series of neuropsychological tests to her at the request of the individual's attorney in this proceeding. Ex. K, Tr. at 274. The Ph.D. psychologist diagnosed the individual as suffering from Major Depressive Disorder Recurrent in Partial Remission. Ex. K at 8.

C. June 1, 2004 Hospitalization and Events Surrounding that Event

During the last week of May 2004, the individual was experiencing extreme pain due to recurring dental problems and was suffering from major depression. Tr. at 14, 19. In an alleged effort to alleviate her pain, the individual took excessive quantities of pain pills, sleeping pills and anxiety pills.[4] *Id.* at 13. The individual's boyfriend at the time (now her current husband) became alarmed and took the individual to the emergency room. Ex. 14. From the emergency room, the individual was admitted to the Behavioral Health Services of the hospital. *Id.* The diagnosis provided by the hospital physicians upon admission and discharge was the same: Major Depressive Disorder. *Id.* Upon discharge, the

[4] The individual told the Personnel Security Specialist that she took between 10 and 30 pills over a three day period prior to her hospitalization. Ex. 8 at 17.

individual was instructed to follow up with Psychiatrist #1 for medication management and with the social worker for counseling. *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).[5] After due deliberation, I have determined that the individual's access authorization should be restored. I find that such a grant would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Criterion F

In the Notification Letter, the LSO alleges that the individual provided conflicting information about her past illegal drug use. Specifically, the LSO states that in 1998 the individual signed and dated a LOI in which she admitted to having used marijuana and cocaine at different times in the 1980s. However, the LSO pointed out that in both the 2004 PSI and the 2005 psychiatric evaluation with the DOE consultant-psychiatrist, the individual admitted to using LSD while she was in junior high school. At the hearing, the individual testified that she never voluntarily ingested LSD. Tr. at 194. She explained that when she was in 7th grade, someone slipped LSD into a beverage that she was drinking. Id. She testified credibly that when she checked the list of drugs on the 1998 LOI that she had used, experimented, or tried, she did not consider the LSD that had been slipped into her drink without her knowledge or consent as a drug that she had voluntarily used, experimented or tried. *Id.* at 195. After carefully considering the record in this case and evaluating the individual's demeanor at the hearing, I have decided that the individual did not reveal her involuntary use of LSD in the 1998 LOI because of an honest misunderstanding on her part. Therefore, I find that the individual has mitigated the security concerns connected with her failure to disclose her LSD experience in junior high school to the LSO in 1998.

The LSO is also concerned that the individual revealed on two occasions that she had used cocaine, *i.e.*, on her LOI in 1998 and during her 2004 PSI, but denied using cocaine during her psychiatric evaluation with the DOE consultant-psychiatrist in 2005. At the hearing, the individual testified that she had in fact admitted to the DOE consultant-psychiatrist that she had used cocaine. Tr. at 211. From the evidence before me, I am unable to determine whether the individual failed to disclose her cocaine use to the DOE consultant-psychiatrist or whether the DOE consultant-psychiatrist attributed an incorrect

[5] Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

response to the individual. [6] It makes little sense, however, that the individual would willingly reveal to the LSO in writing in 1998 and to the Personnel Security Specialist during the 2004 PSI that that she had used cocaine in the 1980s yet she would deliberately lie to the DOE consultant-psychiatrist about having used cocaine. Whatever the explanation for this seeming inconsistency in the record, it seems clear to me that the individual never tried to hide her past cocaine use from the DOE at any time. Therefore, I find that the individual has mitigated the security concerns associated with her alleged failure to tell the DOE consultant-psychiatrist about her past cocaine usage.

B. Criterion H

It is undisputed that the individual suffers from a Major Depressive Disorder. The DOE consultant-psychiatrist, Psychiatrist #2, Psychiatrist #3, the Ph.D. psychologist and the social worker are all in accord with this diagnosis. All the aforementioned mental health professionals are also in accord that the individual (1) has insight into her Major Depressive Disorder, (2) has been compliant with all the mental health professionals who have treated her, (3) has always taken her prescribed medications, and (4) has always acted responsibly regarding her treatment and counseling. For these reasons, all the mental health experts, including the DOE consultant-psychiatrist, have opined that the individual's Major Depressive Disorder is not an illness which is currently causing or may cause a significant defect in the individual's judgment and reliability.

The issue before me in this case is whether the individual suffers from Bipolar II. Psychiatrist #1 and the DOE consultant-psychiatrist diagnosed the individual as suffering from Bipolar II in 2005. Exhibits 17 and 11. Psychiatrist #2 changed his diagnosis from Bipolar II to Depressive Disorder, Recurrent in 2003. The Ph.D. psychologist diagnosed the individual as suffering only from Major Depressive Disorder Recurrent in Partial Remission in 2005. Ex. K. Psychiatrist #3, the individual's current treating psychiatrist, disagrees that the individual suffers from Bipolar II. *Id.* at 120. As noted above, he concluded that the individual only suffers from a Major Depressive Disorder.

In order for a person to be diagnosed with Bipolar II under the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition Text Revision, (DSM-IV-TR), the person must, among other things, (1) currently experience, or have a history of one or more Major Depressive Episodes, and (2) currently experience, or have a history of at least one

[6] At the hearing the individual pointed out what she perceived to be multiple errors in the Psychiatric Report in addition to the one with regard to her negative response to the question about prior cocaine usage. *See* Tr. at 224-248. Specifically, regarding some matters in the Psychiatric Report, the individual claimed that the DOE consultant-psychiatrist erroneously attributed a response to her. With respect to other matters in the Psychiatric Report, the individual claimed that the DOE consultant-psychiatrist never asked her some of the questions that are set forth in the document. As for other matters in the Psychiatric Report, the individual claimed that the DOE consultant-psychiatrist misquoted her or provided incorrect details on a matter. From my perspective, I found it inconceivable that a board-certified psychiatrist would make the number of errors alleged by the individual. It troubles me in this case that the individual has a documented history of disputing the accuracy of medical records or reports prepared by mental health professionals (e.g. Psychiatrist #1, Psychiatrist #2, the DOE consultant-psychiatrist) who provided negative information about her or who provide a diagnosis that she does not like. Despite my concerns about this matter, I am not convinced that the individual deliberately lied to the DOE consultant-psychiatrist about her past cocaine use.

Hypomanic Episode.[7] Since the individual has had a history of Major Depressive Episodes, the pivotal issue at hand is whether the individual has experienced at least one Hypomanic Episode.

Prior to and at the hearing, there was much dispute on this matter. The DOE consultant-psychiatrist provided an extensive discussion in his Psychiatric Report and at the hearing of the specific incidents in the individual's life that he deemed to come within the ambit of a Hypomanic Episode. *See* Ex. 6 at footnotes 26-28, 77, 79-92, 95, 103-107, 138, 141, 145-147, 149-150, 153, 156-160, 163-164; Tr. 50-87. Most, if not all, of the incidents cited by the DOE consultant-psychiatrist allegedly occurred in the November to December 2002 time frame. Psychiatrist #3 disputed that the examples of alleged Hypomanic Episodes can be properly characterized as such under the DSM-IV-TR. Tr. at 124-131. The Ph.D. psychologist testified that there is insufficient data in the individual's medical records to diagnose her with Bipolar II. Tr. at 301.

The individual and several lay witnesses offered some important information about the individual's behavior and demeanor during the times that the DOE consultant-psychiatrist thought that the individual had experienced "Hypomanic Episodes." The individual explained at the hearing for example that she had stayed up late several nights in a row to paint the inside of her house because she was trying to sell the property, not because she was in a hyperactive state. *Id.* at 180-181. She also explained at the hearing that she had purchased an expensive house with her boyfriend (now husband) not in haste but after doing a comparable market analysis and reviewing several properties. *Id.* at 179. This information contradicted the DOE consultant-psychiatrist's assessment that she acted hastily in purchasing the house with her boyfriend. The individual also provided detail on an incident of alleged sexual promiscuity when she was 17 and another incident

[7] The criteria for Hypomanic Episode, taken out of the DSM-IV TR, are as follows:

A. A distinct period of persistently elevated, expansive, or irritable mood, lasting throughout at least 4 days, that is clearly different from the usual nondepressed mood.

B. During the period of mood disturbance, three (or more) of the following symptoms have persisted (four if the mood is only irritable) and have been present to a significant degree:
   (1) inflated self esteem or grandiosity
   (2) decreased need for sleep (e.g. feels rested after only 3 hours of sleep)
   (3) more talkative than usual or pressure to keep talking
   (4) flight of ideas or subjective experience that thoughts are racing
   (5) distractibility (i.e., attention too easily drawn to unimportant or irrelevant external stimuli)
   (6) increase in goal-directed activity (either socially, at work or school, or sexually) or psychomotor agitation
   (7) excessive involvement in pleasurable activities that have a high potential for painful consequences (e.g. the person engages in unrestrained buying sprees, sexual indiscretions, or foolish business investments).

C. The episode is associated with an unequivocal change in functioning that is uncharacteristic of the person when not symptomatic.

D. The disturbance in mood and the change in functioning are observable by others.

E. The episode is not severe enough to cause marked impairment in social or occupational functioning, or to necessitate hospitalization, and there are no psychotic features.

F. The symptoms are not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication, or other treatment) or a general medical condition (e.g., hyperthyroidism).

involving her kissing a woman, information which shed a different light on these two episodes. *Id.* at 182-185.

Three co-workers,[8] testified that they have never observed the individual behave in a manner that could be interpreted as falling within the criteria set forth in the DSM-IV-TR of a Hypomanic Episode. *Id.* at 331-358. The individual's current husband (the man she divorced in 1995 and remarried in 2001) testified convincingly that he never observed his wife behave in a manner suggestive of any of the criteria outlined in the DSM-IV for a Hypomanic Episode.

During the hearing, the individual revealed for the first time that she might have been taking the steroid, prednisone in November and December 2002, the timeframe that coincided with the alleged incidents of "Hypomania" of concern to the DOE consultant-psychiatrist. Upon learning of this new information, the DOE consultant-psychiatrist stated that prednisone at very high doses can elevate a person's mood. *Id.* at 264. Psychiatrist #3 testified that the individual told him during one of their treatment sessions that the combination of prednisone and another prescription medication made her feel jittery and jumpy. *Id.* at 165. The Ph.D. psychologist testified that high doses of steroids could cause symptoms that mimic hypomania. *Id.* at 325. I decided at the hearing that additional information about the individual's use of prednisone during the period November to December 2002 could be crucial to the outcome of this case. Therefore, I advised the parties that I would hold the record open for 30 days to allow the individual the opportunity to submit additional documentation to prove that she was taking the steroid in question during the relevant time period.

After the hearing, the individual tendered Exhibit N, a letter from her primary care physician dated November 8, 2002 that shows he gave her a prescription for prednisone on that day. Ex. N. I then resumed the hearing telephonically after receiving the new evidence to obtain additional testimony regarding the individual's use of steroids and its impact, if any, on the DOE consultant-psychiatrist's diagnosis in this case.

During the second day of testimony, the individual testified that she filled the prednisone prescription after receiving it on November 8, 2002 and continued to use the steroid after mid-November 2002. Tr. at 438-440. While the individual could not obtain the pharmacy records to corroborate that she filled the prescription, she testified that she has the same standing prescription today which calls for her to take 40 mg. of prednisone daily, when needed. *Id.* at 464.

After the individual testified a second time, the DOE consultant-psychiatrist testified again. He first stated that 40 mg. of prednisone a day is sufficient to cause an elevation in mood. Id. at 486. Next, he stated that he believed that the individual had made a good faith effort to obtain her prescription records to document her prednisone use during the period, November to December 2002. *Id.* at 487. He then stated that he would give the individual the benefit of the doubt that she was taking prednisone in November 2002 at

[8] One of the co-workers dated the individual during the time after her divorce and regularly attended classes with her. *Id*. at 331-345. The second co-worker had daily contact with the individual and the third co-worker socialized with the individual on a monthly basis. *Id.* at 346-358.

doses that could have influenced her moods. *Id.* Finally, the DOE consultant-psychiatrist testified that based on (1) the new evidence regarding the individual's prescribed steroid use, and (2) the testimony of the individual's husband [9] that he observed no behavior that the DOE consultant-psychiatrist could characterize as hypomanic, he is no longer 95% certain that the individual suffers from Bipolar II. *Id.* In the end, the DOE consultant-psychiatrist decided that the one episode of hypomania that he and Psychiatrist #1 attributed to the individual was most probably behavior induced by prednisone. *Id.*

The record in this case now supports a finding that the individual does not now, and did not in the past, suffer from Bipolar II. Instead, the overwhelming evidence in the case indicates that the individual suffers from a Major Depressive Disorder, an illness that, in the opinion of several mental health experts, neither causes nor may cause a significant defect in the individual's judgment and reliability. Accordingly, I find that the security concerns associated with Criterion H in this case have been mitigated.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F and H. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns advanced by the DOE. I therefore find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The LSO may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: March 17, 2006

[9] The DOE consultant-psychiatrist testified that in changing his diagnosis in this case he put a lot of weight on the testimony of the individual's expert witnesses and the individual's husband. Tr. at 488. He opined that the individual's husband would not lie about his observations of his wife's behavior because the husband is a DOE security clearance holder. *Id.*